

Protest of) Date: February 10, 1992
RICKENBACKER PORT AUTHORITY)
and)
THE TURNER CORPORATION)
Eagle Air Hub Solicitation) P.S. Protest No. 91-78

DECISION

Rickenbacker Port Authority and The Turner Corporation^{1/} (Rickenbacker) protest award of a contract for the Eagle Air Hub to Indianapolis Port Authority and Eagle Air Hub Realty, Inc. (Indianapolis). Rickenbacker alleges that its proposal was improperly evaluated and that its proposal, rather than that of Indianapolis, was the most advantageous to the Postal Service.

The Eagle Air Hub solicitation^{1/} was issued by the Philadelphia, PA, Facilities Service Center on May 15, 1991, with a proposal due date, as amended, of July 8, 1991. Proposals were solicited for control, through lease or purchase, of an air hub sortation facility located at an airport in Illinois, Indiana, Kentucky or Ohio, which would be used to unload, sort, separate, and reload Express Mail and Priority Mail brought to the air hub by airplanes and trucks. Section A.1 of the Schedule provided that award would be made to the "responsible offeror whose proposal is most advantageous to the Postal Service, price, location, overall project economics, and other factors listed elsewhere in the Solicitation considered." This section also contained standard language reserving the right to negotiate with any or all offerors, to accept any proposal as submitted, and to reject any and all proposals.

Section R set forth the evaluation and award factors as follows:

Proposals will be evaluated by a selection committee designated by the Contracting Officer. Award will be made to the responsible offeror who submits

^{1/} While Rickenbacker Port Authority and The Turner Corporation appear to be separate corporate entities and are represented by separate counsel, they have presented their position jointly, and will be treated for the purposes of this protest as a single party.

^{2/} This document was referred to as a Solicitation for Proposals (SFP) rather than the more common Request for Proposals (RFP).

the best combination of Technical proposal and Price proposal, time, cost and other factors considered. The factors for evaluation are necessarily of a subjective nature and are not necessarily subject to precise quantification. Accordingly, selection will depend to a large measure on the adequacy and completeness of information submitted in response to this Solicitation.

The primary factors to be used in determining which proposal is most advantageous to the Postal Service are listed below. COST/PRICE WILL BE CONSIDERED IN THE AWARD DECISION, ALTHOUGH THE AWARD MAY NOT NECESSARILY BE MADE TO THAT OFFEROR SUBMITTING THE LOWEST PRICE.

- * Airport and Site Location
- * Airport Operating Characteristics, Capabilities, and History
- * Transportation and Highway Access
- * Delivery Time or Move-in Date
- * Mechanization System, Plan, Initial Cost, and Operating Cost
- * Offeror's Prior Performance and Qualifications
- * Offeror's Bonding Capacity and Financing Plan
- * Lease, Purchase, Ground Lease, and/or Renovation Costs
- * Airport Operating Costs
- * Availability of Utilities, Facility Design, and Quality
- * Conformance with Section O Special Provisions^{3/}
- * Conformance with Federal, State, and Local Regulations
- * Support of Airport and Comments from Local Officials
- * Conformance with Solicitation and Contract Provisions

Throughout the solicitation, it was emphasized that the air hub facility and all airport operational systems and facilities be fully operational 365 days after award.^{1/} Sections M and S stated that "time is of the essence," Section K indicated that the Postal Service "is vitally interested in the quality and timeliness of the construction of the facility," Section A.3 required all offers be "fully responsive" to the requirements of the solicitation, and Section A.7 allowed proposals which deviated from the solicitation requirements to be submitted and considered only as an alternate to a proposal which met the solicitation's requirements.

^{3/} These provisions were relocation assistance, environmental policy, intergovernmental cooperation, architectural barriers, historic preservation and participation of small, women-owned and minority-owned businesses.

^{4/} This requirement was mentioned in Sections A.1, A.3, A.4 a, A.4 d, and M of the solicitation. Indeed, Section M provided that "[p]roposals that propose delivery that will not clearly fall within the required delivery period will be unacceptable."

The solicitation also contained the following technical requirements relevant to the issues raised by the protestor:

- a) Multiple runways of at least 9,100 feet were preferred, but not required;
- b) Existing operational Category I ILS approach capability in the main runway,^[4/] with FAA certified, operational Category II ILS by August 1992;
- c) No serious noise abatement restrictions for typical aircraft operations, which included submission of an airport vicinity map showing noise contour levels and a current Noise Compatibility Plan;
- d) ... [W]hether the airport is served by commercial airlines, and, if not, how close it is to a commercially-served airport;
- e) ... [I]f the airport is designated as a port of entry for mail, and, if not, whether the U.S. Customs Service is willing to so designate the airport; and
- f) [The proposed facility was required to s]ort 1,100,000 pounds of mail (78,571 pieces at an average per piece weight of 14 pounds) to 195 locations in the first year.

Offerors were requested to provide information showing how existing facilities would be adapted to the intended use and indicating landing fees and other airport use fees. The solicitation required proposed buildings meet the Uniform Federal Accessibility Standards for handicapped persons and required the contractor to pay the Postal Service liquidated damages of an unspecified amount for each calendar day completion of contract performance was delayed beyond the delivery time specified in the contract.

A preproposal conference was held in Philadelphia on May 30, and on June 7, an amendment was issued which clarified a number of issues and amended the solicitation in several aspects. Significantly to the issues raised in this protest, the evaluation and award factors were modified as follows:

77. QUESTION: Will the USPS describe the relative weighted evaluation factors utilized in the selection process by points or percentage?

*NEW ANSWER: AMENDMENT TO SFP. See Section R. EVALUATION AND AWARD FACTORS (page 15). The primary factors to be used for evaluation are listed below in order of relative importance:

- * Delivery Time or Move-in Date
- * Airport Operating Characteristics, Capabilities, and History

^{5/} The solicitation was ambiguous as to when Category I ILS capability had to be demonstrated with Section A.4 c indicating that the relevant time was the date of award and Section II.c of Attachment to Section B indicating that the capability was required at the time of proposal submission.

- * Conformance with Section O Special Provisions
 - * Offeror's Prior Performance and Qualifications
 - * Offeror's Bonding Capacity and Financing Plan
 - * Lease, Purchase, Ground Lease, and/or Renovation Costs
 - * Airport Operating Costs
 - * Mechanization System, Plan, Initial Cost, and Operating Cost
 - * Availability of Utilities, Facility Design, and Quality
 - * Transportation and Highway Access
 - * Airport and Site Location
 - * Conformance with Federal, State, and Local Regulations
 - * Support of Airport and Comments from Local Officials
 - * Conformance with Solicitation and Contract Provisions
- [Emphasis in original.]

Among the 165 questions and answers were several which dealt with other issues raised by Rickenbacker's protest. Three pertained to the proposed installation of Category II ILS capability. Answer 1 amended Section A.4.c as follows:

FAA certified and flight operational Category I ILS capability is required by August 1992. Category II ILS is required to be FAA certified and flight operational by August, 1993. These ILS requirements are required for the main runway. They are preferred for additional runways.

Offers from airports without Category II ILS system at time of submission of offers shall provide any available documentation showing the feasibility of installing CAT II ILS at the airport. Offerors will be required to submit, upon request by the Postal Service, and prior to contract award; documentation demonstrating to the satisfaction of the Postal Service that CAT II ILS will be flight operational by August 1993. This documentation may include, but is not limited to, a FAA approved feasibility study of the proposed CAT II system, funding schedule, design schedule, approval (including environmental issues) schedule, construction schedule, and flight testing schedule.

If the successful offeror does not have CAT II ILS at time of contract award, the offeror shall be required to submit at least the following: (1) within 90 days of contract award, a FAA approved feasibility study for the CAT II ILS installation (if not submitted previously); (2) within 180 days of contract award, a FAA approved airspace review for the CAT II system. Installation of the CAT II system must be underway within 1 year following award. CAT II system must be FAA certified and flight operational by August 1993. [Emphasis in original.]

Answer 114 indicated that Category II ILS was necessary, although the air hub presently used by the Postal Service lacked it, because the requirements of the Postal Service have changed and this solicitation was structured "to secure an airport that will serve us, literally, into the next century." Answer 161 indicated that, while the FAA did not provide a firm commitment to the Postal Service as to whether Category II ILS systems could be installed within the time frame required by the solicitation, knowledgeable industry contacts estimated that such installation could be completed in 12-18 months.

Answer 3 amended section A.4 c. of the solicitation to provide the following definition and clarification of what the Postal Service meant by "full and unrestricted airport operation":

Operational runway sufficient for FAA approved full and unrestricted operation of the aircraft fleet for year one and year five as identified in Attachment to Section B.II.d. (p. B-3) required by August 1992. Full and unrestricted operation is defined as the ability to operate the aircraft fleet at maximum operating weight (including maximum payload) for a 2100 mile stage length.

All offers shall include a certification from the airport authority outlining the operational restrictions (if any) and type of improvements (if any) necessary to be completed to allow for the full and unrestricted FAA approved operation of the aircraft fleet by August 1992. Offers from airports with existing (at time of response to the solicitation) runway which does not allow FAA approved full and unrestricted operation of aircraft fleet as listed in Section B.II.d. shall demonstrate, to the satisfaction of the USPS, that the runway improvements can be completed and the runway fully operational by August 1992. Such offers shall include as a minimum, a copy of the Airport Layout Plan showing existing runways and proposed improvements. Offerors may be required to submit at least the following prior to contract award: (1) FAA approved feasibility analysis of the runway improvements; (2) FAA approved reimbursable agreement for the relocation (if required) of FAA navigational aids; (3) funding schedule, design schedule, approval (including environmental issues) schedule, and construction schedule, and other documentation necessary for the USPS to determine the capability of the offeror to deliver the requirement by August 1992.

If the successful offeror has a runway which allows less than the FAA full and unrestricted operation of the proposed aircraft fleet at time of contract award, the offeror shall be required to submit items to be determined by the Postal Service after contract award, which may include performance bonds or guarantees.

Answer 14 addressed what was meant by a "designated Port of Entry for mail:"

This is a US Customs Service designation. Not all Ports of Entry are designated as Ports of Entry for mail by the Customs Service. Regional US Customs Office should be contacted for further clarification concerning specific airports.

Answers 23, 43, and 155 reemphasized the 365-day delivery schedule requirement, although this was acknowledged to be an expedited schedule. In response to a question concerning possible extension of the current Eagle contract to allow more time to produce a quality product, answer 164 provided as follows:

The requirement to activate a facility by August 1992 was not dictated solely by the expiration date of the current contract. At this time we have a business opportunity to improve service and expand our Express and Priority Mail product line. The longer we take to take advantage of this business opportunity the longer we suffer revenue foregone.

As to noise contours, Answer 36 provided:

NEW ANSWER: The Offeror is requested to discuss the impact of the proposed USPS operation on off-airport noise sensitive land uses. The discussion should evaluate the proposed USPS operation in terms of noise contours reviewed in the current environmental documentation. Offerors who find that the proposed USPS operation falls within established noise contours should document their opinion by reference to the relevant environmental document. This discussion may be included as part of the response to the previous item (Attachment to Section B, I. e.)

Concerning whether an offeror could propose a sortation system which does not conform to the bar code system presently used by the Postal Service, answer 124 provided:

ANSWER: Yes. There is no restriction on the type of system which can be offered. Offers will be evaluated based on technical merit, initial cost, expansion cost, and operating cost. Any cost required to modify other postal equipment, to accommodate the type of sortation system used at the Hub, would have to be weighed in the evaluation of the proposals, if the systems were not compatible.

Finally, answer 10 set the amount of liquidated damages at \$35,000 for each calendar day of delay, answer 120 referred to the Attachment to Section B. III. b and to Section B. IV. f and g as indications of airport operating characteristics to be evaluated, and answer 131 confirmed that the solicitation's requirements had been written around the Postal Service's needs rather than an existing facility.

Offers were received on July 8, 1991. On August 6, notices were sent to those offerors who were determined to have no reasonable chance of being selected, eliminating them from further consideration. On August 8, letters were sent to those offerors still in the competitive range requesting additional information. The evaluation committee conducted site visits the week of August 19. Best and final offers (BAFO) were requested on August 27 and received on September 9. The BAFOs were evaluated between September 10 and 17.

The contracting officer's report indicates that the technical proposals were scored on a 100-point system, with the following points assigned to the individual award factors and subfactors:^{6/}

^{6/} Three factors listed to be scored in the amendment (Offeror's Bonding Capacity and Financing Plan; considered in the evaluation and award of the contract, even if they were not scored. We do not understand Rickenbacker's protest to include the omission of these factors from the numerical scoring.

Delivery Time or Move-in Date

Maximum: 20 points

305 days or less after award	20 points
335 days after award	19 points
365 days after award	18 points
395 days after award	10 points
425 days after award	5 points
426 to 455 days after award	3 points

Airport Operating Characteristics,
Capabilities, and History

Maximum: 20 points

1. Full unrestricted operation	5 points
2. ICS CAT I or II	2 points
Operating CAT I	1 point
Operating CAT II	2 points
3. Airport capacity constraints/Air space	2 points
4. Operating history/weather	4 points
5. ATC operations 24 hrs	3 points
6. Multiple runways	1 point
7. Ramp and taxi area/year 5	1 point
8. Ground ramp control tower	1 point
9. Aircraft ground support	1 point

Conformance with Section O
Special Provisions

Maximum: 19 points

1. Relocation	1 point
2. Environmental	12 points
A. Environmental approval capability	6 points
B. Current night time operation	3 points
C. Other environmental issues	3 points
3. Intergovernmental cooperation	2 points
4. Architectural barriers compliance	1 point
5. Historic buildings	1 point
6. Socioeconomic/minority business	2 points

Offeror's Prior Performance
and Qualifications

Maximum: 9 points

1. Resumes	1 point
2. Efforts	1 point
3. Subcontracting	1 point
4. Ability to perform	3 points
5. Organization	1 point
6. Related experience	1 point
7. Related facilities	1 point

Mechanization System, Plan,
Initial Cost, and Operating Cost

Maximum points: 9

- | | |
|--|----------|
| 1. Design and explanation
of mechanization | 3 points |
| 2. Capacities for volume year 1
in the time allowed | 2 points |
| 3. Future expansion plan, year 10 | 2 points |
| 4. Maintainability/
use of standard mechanization systems | 1 point |
| 5. Concourse/layout efficiency | 1 point |

Availability of Utilities, Facility Design,
and Quality Maximum points: 6

- | | |
|------------------------------|----------|
| 1. Size | 1 point |
| 2. Site layout | 2 points |
| 3. Emergency power | 1 point |
| 4. Expansion Capability | 1 point |
| 5. Availability of utilities | 1 point |

Transportation and Highway Access

Maximum points: 6

- | | |
|---|----------|
| 1. Accessibility to interstate highways | 2 points |
| 2. Commercial airline availability | 3 points |
| 3. Port of Entry/U.S. Customs | 1 point |

Airport and Site Location

Maximum points: 4

- | | |
|------------------------|----------|
| 1. Taxi time to runway | 1 point |
| 2. High profile | 1 point |
| 3. Ramp efficiency | 2 points |

Conformance with Federal, State,
and Local Regulations

Maximum points: 3

- | | |
|---|---------|
| 1. Land use | 1 point |
| 2. Traffic circulation | 1 point |
| 3. Compliance with Federal, State,
Local regulations | 1 point |

Support of Airport and
Comments from Local Officials

Maximum points: 2

- | | |
|---|---------|
| 1. Proof of ownership | 1 point |
| 2. Demonstrated support of airport
and local officials | 1 point |

Conformance with Solicitation
and Contract Provisions

Maximum points: 2

Satisfactory
Exceptional

1 point
2 points

The evaluated BAFOs were scored as follows:

<u>Location</u>	<u>Technical Score</u>	<u>Cost (Net Present Value)</u>
Indianapolis, IN	92	\$104.9
Fort Wayne, IN	90	\$115.4
Dayton, OH	84	\$105.4
Peoria, IL	79	\$ 89.1
Columbus, OH (Rickenbacker)	78	\$102.1
Toledo, OH	74	\$120.9
Terre Haute, IN	64	\$141.7

The selection committee recommended Indianapolis as required the preferred site on September 19. The contracting officer adopted the recommendation, and senior management officials were briefed on September 29. The Postal Service Board of Governors was briefed on October 8, and the public announcement of Indianapolis as the selected site made on that day. Negotiations with Indianapolis began on October 11. Rickenbacker's protest was filed on October 23. Negotiations with Indianapolis were finalized on November 8, and, after receiving the approval of the Assistant Postmaster General, Facilities Department, to award the contract prior to a decision on Rickenbacker's protest, pursuant to Procurement Manual (PM) 4.5.5, the contracting officer made award to Indianapolis on November 8.

Rickenbacker's Protest

In its protest, Rickenbacker alleges that its proposal was clearly superior to that of Indianapolis in that Rickenbacker's proposal cost \$5 million dollars less, would save the Postal Service \$45 million in landing fees over the next 20 years, and would provide a substantially earlier and more reliable delivery date, as opposed to Indianapolis, which will have difficulty meeting the required delivery schedule, as evidenced by the state of Indiana's guarantee to pay any liquidated damages Indianapolis may incur if the delivery is late. Rickenbacker concludes from these errors that the evaluation of offers was not in accordance with either the evaluation factors set forth in the solicitation or the requirements of unstated Postal Service regulations. Rickenbacker notes that internal postal documents indicate that Rickenbacker was well-suited to serve as the Eagle Air Hub, a disposition that was only strengthened by the numerous contacts between Rickenbacker and Postal Service personnel well before the solicitation was ever issued. Rickenbacker also states that, in good faith and at great expense, it met with and supplied information to postal personnel, and at no time were any deficiencies or disadvantages to its site noted.

Rickenbacker points to two motives which it claims improperly occasioned the selection of Indianapolis. First, Rickenbacker notes that it, along with Dayton and Terre Haute, were the subject of an investigation by the Postal Inspection Service which concluded

that Rickenbacker and Dayton had received "inside information" about the Postal Service's hub selection plans prior to and outside of the procurement process which had unfairly benefited those offerors. Rickenbacker alleges that, even though the Postal Service denied that its contacts with these airports were improper, the contracting officer and evaluation committee slanted the procurement process away from these offerors in order to avoid possible further criticism which would ensue if they were chosen.

Second, Rickenbacker alleges that intense political pressure, applied by Vice President Quayle, Senators Lugar and Coats, and Representative McCloskey, all from Indiana, had a significant impact on the evaluation of offers. It presumes that the choice of Indianapolis had to be motivated by improper political influence, since Indianapolis' proposal was higher priced and less advantageous than its proposal. Rickenbacker requests that we determine that the selection of Indianapolis and the rejection of Rickenbacker were improper and in contravention of postal regulations.

Contracting Officer's Statement and Report

The contracting officer asserts that the \$5 million difference cited by Rickenbacker is misleading, as it represents only the initial purchase price. He claims that the difference in total costs, discounted to net present value, was only \$2.8 million, which amounted to less than 3 percent of evaluated cost (i.e. \$104.9 million vs. \$102.1 million). The contracting officer did not consider this difference to be significant and notes that the solicitation put offerors on notice that award may be made to other than the lowest priced offer. In addition, he was more confident of Indianapolis' cost figures, as its building would not require expansion to meet the year ten requirements, whereas Rickenbacker's would.

Next, the contracting officer notes that the evaluation of the offerors' landing fees was based on revenue estimates provided by the offerors and that Rickenbacker's estimates were only \$3.3 million lower than Indianapolis'. He further notes that Rickenbacker's proposal was restricted by certain contingencies which made the proposal less attractive than it otherwise would have been.¹⁷ The contracting officer implies that the two proposals were roughly equivalent as to the element of cost.¹⁷

The contracting officer states that Rickenbacker was, in fact, given additional credit in the evaluation for its earlier delivery, but that Indianapolis has committed to delivery of the fully operational air hub within the required 365 day period. He understands the guarantee offered by the City of Indianapolis as indicating its confidence that the

¹⁷ Specifically, he describes them as requiring the Postal Service to guarantee 10 years of operation at the air hub and minimum annual landed weights through the first five years at a level of 75% of the projected annual landed weights, to be liable for up to 65% of the total cost of operating the airport, without limitation, and to pay a proportionate share of airside common use facility costs after year 5.

¹⁸ He notes that the cost evaluation of the Rickenbacker proposal left out ground lease costs that, if included, makes Rickenbacker's proposal even less advantageous. Further, he claims that, while real estate taxes were not a part of the cost evaluation, Rickenbacker's proposal would have cost the Postal Service \$206,615 in real estate taxes not incurred in Indianapolis' proposal.

required delivery schedule can be met rather than an indication that Indianapolis intends not to perform in accordance with the delivery schedule.

As to the criticism of the Postal Service's prior contacts with Rickenbacker, the contracting officer asserts that he was unaware of those contacts. He states that the solicitation was issued, proposals were evaluated, and award was made in accordance with the solicitation requirements, based on the recommendations of separate technical and cost evaluation committees. All offerors were given full and fair consideration on the merits of their proposals and award was made to the offer which was most advantageous to the Postal Service.

The contracting officer states unequivocally that no outside influences, including the Inspection Service investigation or political or other pressure, played any role in the award determination. He has submitted an affidavit attesting, under oath, that he was in no way pressured or influenced to select or exclude any particular proposal.^{1/}

Comments on the Contracting Officer's Statement and Report

Following the receipt of the contracting officer's statement and a November 20 debriefing, Rickenbacker remains convinced that the evaluation of offers was fatally flawed because neither cost, facility performance, nor assurance of timely delivery were major criteria in the award determination. It claims that the solicitation "grossly misrepresented" the relative importance of the award factors, in that, even though the absolute weight of factor number one, Delivery Date or Move-In Date, was greater than other factors, its relative weight, as shown by the possible net range of points which could be awarded, was less.^{1/} This weighing of subfactors was inequitable and resulted in a skewed and irrational evaluation system, which Rickenbacker contends is insupportable.

Rickenbacker also takes issue with the points it received on particular subfactors.^{1/} It claims that it was inaccurately penalized five points (three points under the Night Time Operation (Current) subfactor and two points under the Environmental Approval Capability subfactor) based on the noise impact of nighttime operations, when, in fact, the noise impact of such operations was described by the Postal Service's

^{9/} Sworn statements are treated only as persuasive rather than conclusive evidence of the matters contained therein. Carini's Inc., P.S. Protest No. 83-65, December 13, 1983. The statements of the contracting officer are, however, accorded a presumption of correctness. Data Flow Corporation, P.S. Protest No. 83-54, October 28, 1983.

^{10/} As noted above, any offeror who proposed a 365 day delivery schedule received 18 points, an offeror who proposed a 305 day delivery schedule received 20 points, and no additional points were given for delivery schedules shorter than 305 days. In contrast, the tenth evaluation factor, Transportation and Highway Access, had a net point range of 6 points.

^{11/} Throughout its comments, Rickenbacker bolsters its view of the facts with statements allegedly made by a Postal Service representative at its debriefing. To the extent that statements made by postal employees at a debriefing are unsupported in the record, they are not persuasive evidence of the manner in which the evaluation and award procedure was induced.

environmental consultant as "minimal." Rickenbacker asserts that it received the same adjectival rating that Indianapolis did for this item, but that its score was reduced while Indianapolis' was not. Rickenbacker also claims that it was unfairly penalized two points under the Other Environmental Issues subfactor because of fuel spills and a possible asbestos hazard from steam pipes, items not mentioned in the environmental consultant's report, which mentioned only possible groundwater contamination. Further, Rickenbacker received no points of the three available for the commercial airline availability subfactor for "transportation and highway access" because its airport is not served by commercial airlines, which instead use Port Columbus International Airport 13.5 miles away. Rickenbacker claims that the points subtracted for this deficiency were totally out of line with the established evaluation criteria.

Rickenbacker further faults the evaluation committee for giving it only one more point than Indianapolis under evaluation factor eight, Mechanization System, Plan Initial Cost, and Operating Costs, for its superior mechanization system, which it claims will meet the peak sorting load capacity for the hub.^{12/} It claims this unequal treatment arbitrarily ignores the "obvious value" of its system and the inadequacy of Indianapolis'.

Rickenbacker also complains about the following areas in which it lost one point:

- a. A deduction under the subfactor for full and unrestricted operations because its runways were too close together to accommodate simultaneous operations. Rickenbacker argues that this criterion was not set forth in the solicitation and was, in fact, contrary to the solicitation's definition of full and unrestricted operations;
- b. No credit under the subfactor for architectural barriers because of an inability to show that its existing building could be renovated to meet handicap accessibility requirements. Rickenbacker states that this conclusion represents an irrational bias against preexisting buildings and is directly controverted by the survey it submitted demonstrating that such a modification could be accomplished;
- c. No credit under the second subfactor of Airport and Site Location because of its building's lack of a "high profile," which would allow a postal logo placed on the building to be plainly visible over a wide area. Rickenbacker states that this criteria was not specified in the solicitation;
- d. Only one point, instead of two, because Rickenbacker had in place only a category I ILS, not a category II ILS. Rickenbacker alleges this deduction is unfair because it is well along in the process of obtaining FAA approval for a category II ILS and would certainly have had one in place by the time hub operations began;
- e. No credit under the relocation subfactor because of possible Postal Service liability for relocation assistance to Rickenbacker's tenant. Rickenbacker asserts that its tenant, Federal Express, has offered to break its existing lease arrangement, and that this offer is inconsistent with any intent to claim relocation assistance from the Postal Service; and

^{12/} The solicitation did not contain a specific peak sorting load capacity, but, rather, set a daily estimated capacity of 1.1 million pounds of mail.

f. No credit for being a point of entry for mail. Rickenbacker states that it has been designated a point of entry and a foreign trade zone by the U.S. Customs Service, and that the Customs Service indicated its willingness to provide a "full-time reimbursable customs inspector" as needed, which should be sufficient to receive a point in this category.

Rickenbacker further faults the price analysis of its offer, claiming that the contracting officer ignored its guaranteed standard landing fees and, instead, accepted Indianapolis' highly dubious estimates, in which the fees over the next five years were reduced 50% in its BAFO. Rickenbacker claims that the projections of these landing fees were specifically disclaimed both by Indianapolis and its auditors,^{13/} and could not rationally have been the basis of a reasonable analysis. Rickenbacker also claims that the contracting officer is incorrect in his determination that Indianapolis' offer was only \$5 million more expensive than Rickenbacker's. Rickenbacker contends that the difference really is \$17 million, given the additional \$12 million advantage of Rickenbacker's mechanization system. It also claims that it should have received credit for the residual value of the improvements it proposed to make on the building, which it estimates at \$9 million.

Rickenbacker concludes that it has been unfairly treated, that the evaluation criteria were interpreted much more leniently for Indianapolis than for it, and that a totally flawed, completely inadequate award determination has been made. It requests termination of the award to Indianapolis and award to it.

The City of Dayton and Emery Worldwide, a CF Company, (Dayton) have submitted comments. Dayton agrees with Rickenbacker that the evaluation committee failed to evaluate proposals as by the solicitation. It notes that, after stating numerous times in the solicitation that delivery would be required within 365 days after contract award and expressly encouraging offerors to propose earlier delivery dates, the evaluation committee allocated points for proposals that did not meet the 365 day requirement. Dayton argues that this evaluation system is irrational because an offer that was only just acceptable with respect to delivery received 18 out of a possible 20 points and offers that were unacceptable according to the solicitation's requirements (that is, offers proposing to complete the facility in more than 365 days) still could receive some points for this item. Dayton emphasizes that it is not disputing the judgment of the technical evaluators or the contracting officer, but rather the irrational point distribution scheme for the first evaluation factor.

Next, Dayton argues that Indianapolis' proposal should have been rejected as technically unacceptable because it did not meet the required delivery schedule. It notes that Indianapolis specifically conditioned its ability to meet the schedule on a Notice to Proceed being issued no later than October 1, due to the negative impact of winter weather on initial construction activities. Since award was not made until October 31, with the issuance of the Notice to Proceed approximately two weeks later,

^{13/} The auditors stated that the landing fee estimates could not be used for inclusion in an offering circular for the issuance of securities or for obtaining financing, and that the projections could be affected by economic conditions or other variables, and, therefore, may differ from the actual fees.

Dayton contends that Indianapolis is not contractually bound to meet the required delivery schedule and its proposal should have been rejected. Dayton argues that, even if Indianapolis retracted its conditional acceptance of the delivery schedule in post-selection discussions, procurement error occurred because such discussions are not permitted with an offeror whose proposal is technically unacceptable.^{14/} Dayton further argues that even if Indianapolis retracted its delivery schedule condition, that does not change the fact that the weather concerns which gave rise to Indianapolis' need to impose the condition remain, and will prevent Indianapolis from performing in a timely manner.^{15/}

Third, Dayton argues that the contracting officer's use of Indianapolis' "overly optimistic" landing fee estimates was procurement error and violated various sections of Publication 191, Investment Policies and Procedures.^{16/} It alleges that the blind acceptance of Indianapolis' figures without independent evaluation or cost realism analysis unfairly and incorrectly reduced Indianapolis' evaluated life-cycle cost, prejudicing the technical/cost tradeoff and leading to an incorrect conclusion that Indianapolis' proposal was the most advantageous.

Finally, Dayton argues that the evaluation committee did not treat all offerors equally. It states that Indianapolis had the benefit of considerable and substantial discussions with the committee, while its contacts were minor and brief. Therefore, it believes that its proposal was downgraded without its having an opportunity to clarify, explain or revise it, while Indianapolis was able to make changes which enabled it to gain additional points. Dayton requests that we declare the award to Indianapolis illegal and either direct award to it or reopen the evaluation process.

Eagle Development Company, Fort Wayne, IN (Fort Wayne), has submitted comments. It does not think that the Vice President or any Indiana legislator used political pressure to influence the award decision, and that the Indiana senators met with the Postmaster General only to receive assurances that the evaluation process would not be tainted by the "inside information" received by Rickenbacker and Dayton. Fort Wayne notes its disappointment at not having been selected for award, but thinks that it competed on an equal basis with Indianapolis, and does not feel that Indianapolis used any undue influence to receive the award. The Greater Peoria Airport Authority

^{14/} PM 4.1.5 g.5(b) permits clarifications of uncertainties or deficiencies remaining in an offer which has been selected as the most advantageous in accordance with the solicitation's stated evaluation criteria, but states that "no changes may be made in the Postal Service's requirements or in the proposal that, if made before contractor selection, would have affected the basis for selection."

^{15/} Dayton also notes in passing that Indianapolis' proposal contained a condition that the Postal Service maintain a minimum employment level of 500 persons and 34 aircraft flights per business day or 1.2 billion pounds of landed weight per year, and that Indianapolis' BAFO did not retract this condition but merely noted that it was "subject to negotiations."

^{16/} Dayton cites paragraphs 123 and 124 of Publication 191, which require the application of prudent business sense and judgment in evaluating cost proposals, and paragraphs 571.1 and 571.2, which require seeking of advice and use of common sense judgment in the analysis of estimates and assumptions.

submitted a statement which indicated its understanding that, while the solicitation's flight segments implied a hub location at Columbus, the most logical choice was to expand the site at Indianapolis.

Indianapolis Airport Authority and Eagle Air Hub Realty, Inc. (Indianapolis) also submitted comments. Indianapolis notes that the net present value differential between its offer and Rickenbacker's was less than 3 percent, and the landing fee difference was only \$3 million. Given the solicitation's strong emphasis on technical requirements over cost and the clear technical superiority of its proposal, award was correctly made.

Indianapolis notes that Rickenbacker was, in fact, given additional credit for its more advantageous delivery schedule, but that Indianapolis will meet the necessary 12 month delivery schedule. It argues that the facts show that all offers were evaluated and award made in accordance with the solicitation requirements. Indianapolis denies that any political pressure was put on postal officials to select an Indiana site and argues that the contracting officer did not unfairly penalize Rickenbacker because Rickenbacker received inside information prior to the issuance of the solicitation. In sum, Indianapolis argues that Rickenbacker's protest is based on mere theory and speculation, and that Rickenbacker has utterly failed to carry its burden of proof, as its allegations are baseless and without evidentiary foundation.

Supplemental Comments

After the parties' comments were exchanged, several parties submitted supplemental comments. Rickenbacker notes that the contracting officer has failed to justify the fact that the evaluation factors were not afforded their correct relative weight because the range of points actually awarded for the evaluation factors do not correspond with the gross points to be awarded for each criteria. It reiterates that the most important deviation was the relegation of the allegedly most important factor, delivery or move-in date, to seventh most important, and argues that the actual evaluation which occurred deviated materially from the solicitation requirements and misled it.

Rickenbacker notes that a clause entitled "Force Majeure"^{17/} was included in Indianapolis' contract as the result of negotiations after its selection. Rickenbacker contends that the provision effectively eviscerates the 365-day delivery requirement by allowing delivery delay for merely "severe" weather (i.e. temperatures near freezing),

^{17/}

A.70 FORCE MAJEURE

The time for performance by contractor under this contract shall be extended due to delay in the prosecution or substantial completion of the work for causes beyond the control and without the fault or negligence of the contractor, including but not limited to the presence of an Environmental Condition (as defined in the Ground Lease) or unusually severe weather (which means weather that does not allow productive work on contractor's critical path). The parties acknowledge that exterior concrete cannot be poured when the outside temperature is near or below 32 degrees fahrenheit and further acknowledge that such temperatures are likely at both the beginning and end of contractor's critical path. The parties therefore agree that such weather related delays will likely result in delays greater than the period of such severe weather if it interferes with the scheduled pouring of exterior concrete.

where the initial solicitation condoned delay only for "unusually severe weather" (i.e. unforeseeable conditions). In Rickenbacker's view, this clause, combined with Indianapolis' conditional delivery schedule, eliminates Indianapolis' legal obligation to meet the 12-month delivery schedule and constitutes a major change in the solicitation requirements.

Rickenbacker reasserts that Indianapolis' mechanization system does not even begin to meet the necessary 40-45,000 pieces per hour throughput requirement specified in the solicitation.^{18/} It believes this to be another material change in the solicitation requirements. Rickenbacker also reiterates that its proposal is much less costly to the Postal Service, even when discounted to net present value,^{19/} and that Indianapolis' proposal is likely to be even more costly because of the substantial additional cost necessary for it to meet the mechanization throughput requirements. Finally, it concurs with Dayton's argument that the PM does not permit post-selection changes if such changes would affect the basis for the selection.

Dayton's supplemental comments express the unfairness of the "ForceMajeure" clause.^{20/} It argues that the combination of that clause, the redefinition of weather delays, and Indianapolis' conditional acceptance of the 365-day delivery schedule undermines the 12-month delivery requirement and, in fact, assures the Postal Service that the air hub will not be delivered within one year from the date of contract award. Dayton further argues that, even under the unsatisfactory evaluation point scheme used by the evaluation committee, Indianapolis would have lost enough points not to have been selected for award if it had been forthright in stating what is now apparent: that it will not complete delivery within the required time frame. Only by receiving special consideration in the post-selection negotiations was Indianapolis able to receive award, an award to which, based on its initial proposal and BAFO, it was never entitled. Finally, Dayton notes that Indianapolis' contract provides no landing fee schedule and no limitation on the rate or amount of future landing fees, reemphasizing the errors made by the contracting officer in the comparison of the offerors' costs.

Indianapolis has submitted comments which begin by arguing that the appropriate standard for our review can be gleaned from the Administrative Procedures Act (APA).^{21/}

^{18/} Rickenbacker does not cite any portion of the solicitation, citing instead the October 17, 1991, minutes of a meeting between Indianapolis and the Postal Service, which states, in pertinent part, that the "USPS believes that a year one system throughput of 40,000 to 45,000 pieces per hour should be the design basis."

^{19/} Rickenbacker estimates the cost advantage of its proposal as between \$12.5 million and \$35.6 million, depending on what set of figures and assumptions are used.

^{20/} Dayton's supplemental comments were filed one day after the date set for the filing of such comments. This has occasioned three sets of additional comments from Indianapolis, as well as additional comments from Dayton and Rickenbacker, discussing various procedural and substantive issues. As we do not perceive that any party was prejudiced by the tardy filing of Dayton's supplemental comments, we have not taken into account any filing dated after December 24, 1991.

^{21/} Indianapolis states this standard as either a lack of a rational basis or a clear and prejudicial violation of applicable statutes and regulations. Kentron Hawaii, Ltd. v. Warner, 480 F.2d 1166, 1169 (D.C. Cir.

Citing Birmingham Realty Co. v. GSA, 497 F. Supp. 1377, 1389 (N.D. Ala. 1980), it further contends that Rickenbacker and Dayton (to the extent it raises issues that can be considered a separate protest)¹⁷ lack standing, because they were ranked fifth and third respectively, and, have failed to show that, if the procurement errors had not occurred, they would have received award. Since neither challenged the evaluation of the second ranked offeror, Fort Wayne, they lack standing to challenge the award to Indianapolis.

Indianapolis argues that the scoring method used by the Postal Service was not irrational, noting the lack of precedential authority supporting Rickenbacker's position. It states that the scoring was within the discretion of the Postal Service and that Rickenbacker has totally ignored the elaborate evaluation system used by the Postal Service here, which included a ranking based on a matrix of strengths and weaknesses of the proposal, resulting in a recommendation by the selection committee which was received and approved by the contracting officer, all of which was based on the solicitation's stated evaluation factors. Indianapolis argues that Rickenbacker has failed to show either that the Postal Service's judgment as to the significance of the point scores awarded or the weight given to the relative factors set forth in the solicitation was irrational. It further argues that Dayton has conceded that Indianapolis met the delivery schedule requirement, and that any points to be awarded for earlier delivery are to be determined by the discretion of the Postal Service. Indianapolis states that the fact that the evaluation scheme allowed points for proposals which did not comply with the delivery requirement is irrelevant, since its proposal did comply, but it was reasonable for the evaluation scheme to do so, because it allowed the evaluation of initially nonconforming offers which could be capable of being made to conform. Indianapolis views the first evaluation factor as entailing a 17-point spread (from 3 points for a 455 days delivery to 20 points for 305 day delivery), rather than the 2-point spread which Rickenbacker asserts.

Indianapolis argues that the contracting officer properly evaluated landing fees. It notes that the reduction in its landing fee estimates in its BAFO legitimately arose from a revision in its estimates,¹⁸ which spread its costs over a greater base and decreased its estimated fees. Indianapolis states that Rickenbacker's attack on its landing fees ignores the contingent nature of Rickenbacker's fee structure and its weak financial condition, and that the contracting officer's judgment that Indianapolis' fee projections were more reliable and offered greater value than Rickenbacker's was reasonable.

Indianapolis further notes that Dayton's charge that the Postal Service violated the provisions of Publication 191 concerning the necessity for an independent evaluation

1973).

^{22/} Indianapolis also argues that any protest issues independently raised by Dayton are also untimely pursuant to PM 4.5.4 d., as filed more than 10 working days after Dayton knew or should have known of the information on which the protest was based and more than 15 working days after award.

^{23/} Specifically, Indianapolis' initial proposal discounted the number and weights of the estimated Postal Service landings based on its past experience with the Postal Service. Its BAFO removed its reduction from the Postal Service's estimate.

and cost realism study is mistaken for two reasons: first, the SFP neither referred to Publication 191 nor notified offerors that a cost realism study would be conducted, and second, that publication requires only that those who conduct a financial evaluation seek advice from other interested parties; it does not require that a cost realism study be performed on a solicitation such as the present SFP. Indianapolis notes, in any event, that its fees were the subject of close scrutiny and analysis by the Postal Service and that its fees are realistic and lower for valid reasons. Its auditor's disclaimers were merely standard provisions designed to limit the analyses to the specific purpose for which it was undertaken, rather than any indication of weakness or difficulty in the analyses.

Indianapolis further claims that the reductions in Rickenbacker's evaluated score for noise concerns and lack of commercial airline operations were reasonable and well within the contracting officer's discretion. It notes that Rickenbacker received more points for its mechanization system than Indianapolis, and takes issue with Rickenbacker's critique of Indianapolis' system, claiming that it can meet a peak sort capacity of 45,000 pieces per hour. Indianapolis also disputes the other figures used by Rickenbacker as to Indianapolis' sortation system as unreliable and mistaken.

Indianapolis argues that the cost evaluation conducted was proper and reasonable, and that, even if Rickenbacker's proposed price comparison was better, the Postal Service's calculation must be sustained if it is reasonable and in accordance with our regulations. It argues that Rickenbacker's other cost-based complaints are baseless. Indianapolis also states that the evaluation committee did not rely on factors outside the solicitation, and that all of the subcriteria used were reasonably related to the award criterion under which it was employed. It further alleges that the committee's evaluation of offers under the subcriteria were neither arbitrary nor unreasonable, but that Rickenbacker's complaints are merely based on differences of opinion as to the subcriteria weights and the conclusions reached by the committee.

Indianapolis claims that its BAFO meets the 365-day delivery requirement because Indianapolis commenced construction activities before October 16, 1991, as was necessary for it to meet its commitment for a one-year delivery.^{24/} Therefore, any allegation that its proposal was nonconforming and should have been rejected is baseless. Finally, Indianapolis asserts that the contracting officer did not discriminate in favor of it, but rather treated all offerors fairly and equitably.^{25/}

The contracting officer has submitted additional information in response to the parties' comments and specific inquiries from this office. He states that Indianapolis' proposal met the delivery schedule, and that the notation on its proposal concerning the vagaries of weather was not interpreted as a condition. He notes that the evaluation

^{24/} This activity by Indianapolis was in advance of the date of award and the date of the notice to proceed.

^{25/} Indianapolis asserts that it is ironic and hypocritical for an offeror such as Dayton, which was given advance information about this procurement one year before most other offerors as well as additional conversations and correspondence prior to the issuance of the SFP, to claim that it was unfairly and inequitably treated.

scheme's inclusion of points for offers providing to deliver after the required delivery date took into account the possibility that no acceptable proposals offering a delivery date of 365 days might be received, but that since such proposals were received, those of all offerors who did not meet the delivery schedule were found unacceptable and rejected. He notes that additional points were not allocated for site delivery more than 60 days ahead of the desired schedule because such delivery would have been of no operational benefit and would have been an economic burden since the incumbent hub contract would still be in effect. He explains in detail and with supporting documentation the justification for the points that were deducted from Rickenbacker's proposal,^{26/} and notes that points were not deducted from Rickenbacker's proposal because it could not accommodate simultaneous operations, as that was not a requirement of the SFP.^{27/} Further, he notes that the solicitation did not mandate any particular peak sort capacity, but only a daily requirement, and that, since Indianapolis' system is manual, use of additional personnel can increase its peak sort rate when needed.

^{26/} In brief, these include the following:

- a) an environmental impact study would be necessary prior to commencement of nighttime operations, delaying the start of contract performance, due to significant increases in noise levels and over 100 occupied housing units around 2000 feet from the taxiway;
- b) a documented fuel spill of 10,000 gallons, which had not been remediated and which further inquiry showed had contaminated the soil;
- c) independent observation of asbestos removal hazards seen on site visits by the evaluation committee of Rickenbacker's facility;
- d) insufficient detail and some ambiguity as to Rickenbacker's capability and commitment to achieve full compliance with the handicapped accessibility requirements;
- e) visibility of the facility was an important component of the airport and site location, and Rickenbacker's site was deficient in this respect;
- f) Rickenbacker's failure to have a presently operational Category II ILS system represented a risk that it would not meet the SFP requirement that such a system be in place by August, 1993;
- g) Rickenbacker's proposal does not demonstrate that it is a Port of Entry for mail, but only that it may be accepted, at a future time, as such;
- h) the undisputed lack of commercial airline operations at Rickenbacker would have significant disadvantages to hub operations;
- i) the documentation was, at best, conflicting regarding the risk that Federal Express would claim relocation assistance benefits.

^{27/} Rickenbacker received full credit under the Multiple Runways subfactor. A point was deducted under the Full and Unrestricted Operations subfactor due to the need for reconstruction of one runway and weight limits on the other runway.

As to Indianapolis' landing fees, he notes that cost or price analysis would be inappropriate, as these fees are established annually based on past experience and future projections. Accordingly, all offerors' fees were evaluated based on estimates of future fee rates. The contracting officer states that the fees were found to be reasonable based on an analysis of historical rates, the methodology used by Indianapolis to calculate its rates, and the computations provided by its auditors, and that the assumptions involved were prudent and justified. He explains that the auditor's disclaimers are included as standard practice to avoid the use of the calculations for purposes other than that for which they were intended. He further explains that Rickenbacker's fees were only "guaranteed" given the acceptance of unacceptable conditions, and were deficient in numerous ways. The contracting officer also detailed the cost analysis used to evaluate the offers.¹⁷

Finally, the contracting officer asserts that the discussions with Indianapolis throughout the procurement process were no more extensive than those engaged in with other offerors. After BAFOs, Indianapolis withdrew its conditions concerning minimum employment levels and numbers of flights. In summary, he acknowledges that, while Rickenbacker may be justifiably disappointed that it did not receive award, its "second-guessing" does not alter the correctness of the decision to award to Indianapolis.

Discussion

The first issue raised by Rickenbacker deals with the allocation of points to the evaluation criteria and subcriteria. Rickenbacker claims that the evaluation criteria, as applied, were not ranked in order of relative importance, as the solicitation stated. With one minor exception,¹⁸ this allegation is incorrect. As the evaluation matrix set out above shows, the evaluation criteria were ranked in declining order of the total number of points allocated to each of the criteria. That comports with our understanding of what is meant by the "relative" weight of the evaluation criteria -- that a particular criterion will not have a higher possible total point score than any criteria which is ranked above it. This solicitation requirement was not violated here.

Rickenbacker's real concern is somewhat different. First, it complains that proposals were awarded points which did not match the ranking of relative weights established in the solicitation. It notes that offerors offering compliant delivery schedules would receive at least 18 points, and no more than 20 points, (a relative difference of two points) for the first ranked factor, Delivery or Move-In Date, while offerors could receive between zero and six points for the tenth ranked evaluation factor, Transportation and

^{28/} The cost of capital investment, including facilities and mechanization, was computed with an 11-year cash flow, deducting the residual value of the building (the mechanization was assumed to have a residual value of zero). In addition, operating costs, such as mechanization operating costs, fuel pumping and user fees, landing fees and ground lease costs, were included, with escalation factors. The sum of these costs over the ten year contract term were discounted at a rate of 10.5% to arrive at the net present value of the proposal.

^{29/} The first two evaluation factors were both afforded the same weight, rather than the first factor receiving more weight than the second. This, however, is not the point of which Rickenbacker complains.

Highway Access. It therefore concludes that the actual evaluation of offers proceeded in a manner at variance with the solicitation's stated relative evaluation weights.

Rickenbacker's analysis is incorrect. There is no necessary relationship between the overall weight afforded a particular evaluation factor and the actual differences which show up in scoring of offeror's proposals. Rickenbacker cites to no authority for such a relationship. Indeed, it would seem fairly remarkable if, in a complex, multi-criteria evaluation scheme such as this one, the relative weights of the evaluation criteria were perfectly reflected in the point spread among the offerors. That some offerors may have done a particularly good or bad job in meeting certain lower ranked requirements does not make the evaluation, as conducted, faulty.^{30/} This part of Rickenbacker's argument is without merit.

Another argument Rickenbacker appears to make is that the evaluation scheme is irrational because the subcriteria categories do not reflect appropriate credit under the stated criteria, and that it was misled by the difference. Rickenbacker bears a heavy burden in arguing that the subcriteria weights have been inappropriately distributed. Such allegations will be upheld only if the contracting officer has abused his broad discretion to select and weigh evaluation criteria and subcriteria. Cf. Frederick Manufacturing Company, P. S. Protest No. 87-13, April 8, 1987. Even if we were to disagree with the weights established by the contracting officer and the evaluation committee, we cannot sustain such a protest unless the weights are so skewed as to amount to an abuse of discretion. See Colmia Airlines, Inc., P.S. Protest No. 87-118, April 14, 1988.

In this case, Rickenbacker has not met its burden of proof. It seems clear that the subcriteria here assigned weights consistent with the disclosed evaluation scheme. The focus of Rickenbacker's arguments is that it was incorrectly evaluated under the first ranked factor, delivery date, because it was not awarded an adequate number of additional points for its early delivery schedule relative to the number of points awarded for the required delivery schedule. It is unclear where Rickenbacker's expectation came from in this regard, since, although the solicitation is explicit in its stress on the necessity of completion in accordance with the delivery schedule, it is devoid of any suggestion that early completion was, of itself, desirable. In addition, the contracting officer has adequately explained the rationale which went into the manner in which the points for that factor were established, and we are unable to find that that criterion is unreasonable, either as stated or as applied.

As to the propriety of the evaluation of Rickenbacker's proposal in other respects, the extent of review is limited:

We will not substitute our judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Amdahl Corporation, P.S. Protest 81-34, September 29, 1981; The Macke Company, P.S. Protest 81-41, September 23, 1981, citing Buffalo Organization for Social and Technological Innovation, Inc., Comp. Gen. Dec. B-

^{30/} In fact, offerors might well have greater variances on lower ranked criteria, as they would place less emphasis on such criteria.

196279, February 7, 1980, 80-1 CPD & 107. The evaluation of technical proposals is a matter within the discretion of the procuring activity, since that activity is responsible for identifying its needs and the best method of accommodating them. See Health Management Systems, Comp. Gen. Dec. B-200775, April 3, 1981, 81-1 CPD & 255. Our review of the evaluation of technical proposals is thus necessarily limited -- we do not make our own determination as to their acceptability. Cf. Struthers Electronics Corporation, Comp. Gen. Dec. B-186002, September 10, 1976, 76-2 CPD & 231, Kirschner Associates, Inc., Comp. Gen. Dec. B-178887, April 10, 1974, 74-1 CPD & 182. Moreover, a technical evaluation is based upon the information contained in the proposal, so that no matter how capable an offeror may be, it runs the risk of losing the competition if its proposal does not include the information necessary to evaluate this capability. Blurton, Banks & Associates, Inc., Comp. Gen. Dec. B-205865, August 10, 1982, 82-2 CPD & 121.

H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984.

We are unable to discern any substantial flaws in the evaluation of Rickenbacker's proposal under this standard of review. Rickenbacker's complaints about several areas in which it was downgraded, such as the number of points it received concerning its mechanization system, and its failure to have commercial airline operations, are more an objection to the points allocated to that particular evaluation criterion than a dispute over Rickenbacker's evaluation with respect to that factor. As set forth above, such an argument is without merit. In several other areas, Rickenbacker's proposal had points deducted because of risk perceived by the Postal Service, such as the possibility of payment of relocation assistance to its existing tenant and the present lack of a Category II ILS system which would be required by 1993. Rickenbacker's disagreement with the contracting officer's conclusions in these areas do not substitute for proof that those conclusions were arbitrary, or otherwise establish the absence of the risk which caused the deduction.

In other areas, such as handicap accessibility requirements and being a point of entry for mail, the evaluation committee interpreted Rickenbacker's proposal in a reasonable manner. We will not substitute our judgment for that of the technical evaluators in such a situation. As to the point deductions for noise impact, fuel spills and asbestos hazards, the evaluation committee's conclusions are supported by the record and are not to be overturned by our office.

Finally, we agree with Rickenbacker that the deduction of one point for the lack of its building's "high profile" was unreasonable. Nothing in the solicitation identified such a requirement or alerted offerors to its importance. Without notice that this item was important to the Postal Service, Rickenbacker could not have been aware that it could lose points in this area. As the one point involved would not be enough to change the results of the evaluation, it is, therefore, harmless error which did not prejudice the protester. See TRW Financial Systems, Inc., P.S. Protest No. 91-19, May 29, 1991.

As to the evaluation of the cost proposals of the offerors, our review of the record does not indicate that the evaluation was arbitrary or capricious. The protester bears the burden of showing that the cost analysis was incorrect. See TRW Financial Systems, Inc., supra. The contracting officer has discretion in reviewing the cost proposals of

offerors and determining which proposal is evaluated as the lowest cost. Id. Our review indicates that the contracting officer acted within the scope of his discretion in his evaluation of the cost proposals, and that Rickenbacker has not met its burden of proof that the cost analysis conducted was incorrect or in any manner flawed.

In sum, the dispute concerning the evaluation of Rickenbacker's proposal is of the subjective, judgmental type which is normally outside the scope of our review. We can understand and appreciate Rickenbacker's disagreement with the evaluation of its proposals. However, sufficient evidence supports the areas in which points were deducted, especially given the "presumption of correctness" accompanying the statements of the contracting officer, Data Flow Corporation, supra, to support a finding that the evaluation was not arbitrary or in violation of procurement regulations, and, therefore, may not be overturned.

As to the issues concerning the technical acceptability of Indianapolis' proposal and the alleged misvaluation of that proposal, Rickenbacker and Dayton, insofar as Dayton's comments can be deemed to raise independent grounds of protest, lack standing to assert these claims. A key element of our protest regulations is that only an interested party can file a protest. PM 4.5.2 a.; see National Controls, Inc., On Reconsideration, P.S. Protest No. 84-3, May 2, 1984. The necessary criterion for an entity to qualify as an "interested party" to be able to file a protest was established in Electrocraft Industries, Inc., P.S. Protest No. 83-42, September 1, 1983: "[W]hether the protester could be ... eligible for award of the contract if the protest was upheld." The rule of Electrocraft Industries has been frequently followed in subsequent decisions of our office. See, e.g., Canteen Service Inc., P.S. Protest No. 90-68, November 15, 1990 and cases cited therein. In Consultants & Designers Inc., P.S. Protest No. 90-11, May 18, 1990, dealing with a negotiated procurement conducted under the PM, the fifth ranked offeror lacked standing to challenge the award to the first ranked offeror without challenging all the interviewing offerors. As we explained in Gulf & Atlantic Maritime Services, Inc., P.S. Protest No. 90-22, July 18, 1990, if an offeror fails to challenge the eligibility of all higher ranked offerors, it lacks standing because, even if the award to the successful offeror was reversed, the protester would not receive award.

The requirement that a protester have standing as an interested party is not a mere whim or caprice, but a very real limitation on the power of our office to render protest decisions.^{31/} Where a party lacks the necessary "self-interest" in protest issues, see National Controls, Inc., On Reconsideration, supra, it would be "academic" to reach the merits of a protest, since the protester will not be eligible for award even if the protest is sustained. See, e.g., Electrocraft Industries, Inc., supra. We are without authority to waive the procedural requirement of standing established by our protest regulations. "To render a decision on a matter over which we have no jurisdiction would be to engage in a meaningless excursion." POVECO, Inc., On Reconsideration, P.S. Protest No. 85-9, June 12, 1985.

Neither Rickenbacker, which was the fifth ranked offeror, nor Dayton, which was the

^{31/} It is fitting that, in exercising our limited protest jurisdiction, prescribed by and dependent on regulations, we deal only with the issues presented by parties who have the standing to present them. See generally Doninger Metal Products Corp., P.S. Protest No. 83-6, June 17, 1983.

third ranked offeror, have standing to challenge any improprieties in the evaluation of Indianapolis' proposal. Neither of these parties have called into question the evaluation of Fort Wayne, the second ranked offeror, in any manner, and Fort Wayne has not disputed Indianapolis' evaluation. Therefore, we lack authority to opine concerning the evaluation of Indianapolis' proposal.

Finally, Rickenbacker has alleged that the award decision was improperly motivated by the investigation of it by the Inspection Service because of concern about the receipt of "inside information" and by political pressure applied by Indiana politicians. Our review of such allegations of bias is as follows:

The protester has the burden of proving bias on the part of procurement officials. Penny H. Clusker, P.S. Protest No. 80-37, August 27, 1980; Book Fare, P.S. Protest No. 80-29, July 3, 1980. Unfair or prejudicial motives will not be attributed to individuals on the basis of inference or supposition. Universal Analytics, Inc., Comp. Gen. Dec. B-200938, 81-2 CPD & 11, July 7, 1981 (citing A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD & 541).

F.R. and Lee MacKercher, On Reconsideration, P.S. Protest No. 85-45, October 7, 1985. The record does not indicate that Rickenbacker has carried its burden of proof. Its unsupported allegations are rebutted by both the statements of the contracting officer and the comments of Indianapolis and Fort Wayne, and the record evidences no bias of the kinds of which Rickenbacker complains in the selection and award process.

We have examined the arguments made by Rickenbacker and the comments submitted by various parties, which provide no basis to disturb the award of the air hub to Indianapolis. The protest is dismissed in part and denied in part.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/17/95 WJJ]